IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. D.V.B.,[†] Appellant.	No. 37754-3-II UNPUBLISHED OPINION

Houghton, P.J. — D.B. appeals his adjudication of second degree trespass, arguing that substantial evidence did not support two of the trial court's findings of fact and that his adjudication for second degree trespass denied him due process of law because the notice of trespass was unconstitutionally vague. Because insufficient evidence supported his adjudication, we reverse and remand to dismiss.

FACTS

In 2007, D.B. attended Mountain View Middle School in Bremerton. On December 17, Michael Sellars, principal of Armin Jahr Elementary School, issued D.B. a notice of

[†] It is appropriate to provide some confidentiality in this case. Accordingly, it is hereby ordered that initials will be used in the case caption and in the body of the opinion.

trespass after he observed D.B. on the Armin Jahr campus engaging in disruptive activity. The notice read, "You are hereby ordered effective this date, by written notification that you are **not** to enter, re-enter, or be found within or upon any premises of Armin Jahr Elementary School during school hours." Ex. 1.

On January 9, 2008, after classes had ended, William Palmer, a paraeducator at Armin Jahr, was outside clearing the children from the area where the buses arrive and park. A school bus driver noticed two youths on the school grounds throwing snowballs at approaching buses. The driver informed Palmer about the youths. Palmer then saw two boys walking behind him, one of whom had a snowball in his hand. Palmer took the boys to his office and had them write down their names and told them to leave the school property. After they left, Palmer checked their names and realized that D.B. had previously received a notice of trespass. Based on this information, Sellars notified a Bremerton police officer that D.B. had been on the premises.

On January 17, the State charged D.B. with second degree criminal trespass under RCW 9A.52.080(1).[1] At the juvenile proceeding, he testified that after he attended classes at his school on January 9, he went to Armin Jahr. He planned to cut through the Armin Jahr campus to go to a store. He testified that he understood the notice of trespass to mean "stay off the property during school hours, and after school hours, don't go near the buildings" and that he "followed the directions." Report of Proceedings (RP) at 39, 40.

[1] Second degree criminal trespass occurs when a person "knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree." RCW 9A.52.080(1). First degree criminal trespass occurs when a person "knowingly enters or remains unlawfully in a building." RCW 9A.52.070(1).

Both Palmer and Sellars testified during the proceeding. When D.B.'s defense counsel asked Sellars if the phrase "school hours" as used in the notice of trespass meant the time classes were in session, Sellars replied that it did not. Sellars later stated that, according to his understanding, "school hours" meant "operational hours," those hours during which school staff are supervising students for school purposes. When confronted with two school policies that use the phrase "school hours," Sellars conceded that under those policies, "school hours" means the time when classes are in session.[2] Written school policy does not explicitly define "school hours."

At the end of the proceeding, the trial court concluded that D.B. "knowingly entered and remained upon the premises of the Armin Jahr Elementary School during school hours in violation of the Notice of Trespass he had previously signed." Clerk's Papers (CP) at 32. In support of this decision, the trial court found as a factual matter that he "was on the campus during school hours in violation of the notice of trespass" and that he "at no time expressed confusion or misunderstanding regarding the terms of the notice of trespass." CP at 32. He appeals.

ANALYSIS

D.B. argues that substantial evidence did not support the trial court's finding that he was on the Armin Jahr campus during school hours and at no time expressed confusion regarding the terms of the notice of trespass. We agree.

When analyzing a claim of insufficiency of the evidence, we determine whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt after viewing the evidence in the light most favorable to the State. *State v. Salinas*, 119,

[2] These policies state that students cannot be removed from school grounds during school hours except by a person duly authorized to do so.

Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency of the evidence admits the truth of the State's evidence, and we draw all reasonable inferences from that evidence most strongly against the defendant. *Salinas*, 119 Wn.2d at 201.

The State needed to prove beyond a reasonable doubt that D.B. knowingly entered or remained unlawfully in or on the premises of Armin Jahr Elementary School during school hours.[3] *Salinas*, 119 Wn.2d at 201-02. But the State failed to establish, and the trial court never found as a factual matter, whether "school hours" included times when classes were not in session. First, "school hours" are not defined in either the notice of trespass or the school policies. Second, Sellars admitted that multiple school policies use "school hours" to denote when classes are in session. Thus, the State cannot sufficiently prove that D.B. entered or remained on school property during school hours unless it can show that he did so when classes were in session.

The State also failed to prove beyond a reasonable doubt that D.B. entered or remained on Armin Jahr property when classes were in session. Palmer testified that school employees first saw D.B. on school property after classes had ended and while school buses were arriving. But no witnesses established when the buses arrived, only that the buses generally do not leave the campus until over an hour after classes end. Thus, even if the facts support the reasonable inference that D.B. arrived on campus several minutes before the school buses started to arrive, they do not reasonably support the inference that he must have entered the premises before classes ended. Therefore, the State failed to provide sufficient evidence that D.B. entered Armin

[3] Neither party disputes that D.B. could lawfully enter Armin Jahr premises outside of school hours.

Jahr property during school hours.[4]

The dissent argues that we should infer that because D.B. stated he went to the school to cross the grounds to get to a store and was caught throwing snowballs on school grounds, that he must have crossed through the school before throwing snowballs. Dissent at 7. We agree that a claim of insufficiency admits the truth of the State's evidence and all inferences that can be reasonably drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Although the dissent's description of events is a possible interpretation of the evidence, it is not the only plausible interpretation and is not a conclusion the trial court made as fact finder.

We also consider that insufficient evidence fails to establish the geography of the situation: Had D.B. approached the school from one end of school grounds and been caught on the other side, the dissent's inference could be reasonable. But the evidence here only establishes his goal of crossing through to get to a store and that Sellars saw him on school grounds. We know nothing of his original location. Thus, we disagree that the evidence presented, even in the light most favorable to the State, sufficiently proves guilt beyond a reasonable doubt.

[4] Where a reviewing court finds insufficient evidence to support an element of a crime, the proper remedy is reversal and dismissal. *State v. Smith*, 155 Wn.2d 496, 505-06, 120 P.3d 559 (2005).

Reversed[5] and remanded to dismiss.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Houghton, P.J.

I concur:

Quinn-Brintnall, J.

[5] Because we reverse on sufficiency grounds, we do not address D.B.'s constitutional argument.

Hunt, J. — (dissenting) I respectfully dissent. DB did not raise at trial the issue of whether the term "school hours" was too vague for him to understand or to serve as the basis for a trespass prosecution. On the contrary, he testified that he knew he was not supposed to enter or to be on school grounds during school hours or near any school buildings at other times.

Although I agree with the majority that it would have been preferable had the school principal's trespass notice specified the exact times during which DB was not allowed on school grounds, I do not agree that failure to do so was fatal here. Despite several definitions of "school hours," common sense would have told anyone, including DB, that he was clearly on school property during "school hours" when he was throwing snowballs at a school bus onto which children were preparing to load to ride home at the end of their school day.

I also respectfully disagree with the majority's position that the evidence is insufficient to support the trial court's trespass finding. DB admitted on the witness stand that he was crossing school grounds to go to a store on the other side. From DB's and the other boy's being positioned to throw snowballs at the school bus, the finder of fact could reasonably infer that DB had entered the school grounds *before* the snowball-throwing incident and, therefore, *before* the students were preparing to board the school bus. In other words, although DB said he had entered the school grounds to take a short cut cross to a store, he did not proceed immediately across; instead, he stopped and positioned himself such that he could throw snowballs at the bus as the students were preparing to embark after school let out. Thus, DB's admitted entering and crossing the school grounds and his positioning himself are circumstantial evidence of his entry onto and presence on school grounds several minutes earlier, i.e., during "school hours," which

ended just before the students left the school to board the bus.

With all due respect to my colleagues, in my view they do not look at the facts in the light most favorable to the State post-conviction, as they recognize we must, when they postulate that the school buses could have remained for up to an hour on school grounds after classes ended.[6] Majority at 4. Although Sellars testified that buses leave the school an hour after classes end on Wednesdays, he further stated that "students load [the bus] when that school bell rings," in other words, immediately after the last class of the day ended. Because the students had not yet begun to board the buses when DB was throwing the snowballs, it is reasonable to infer that, to have positioned himself to throw snowballs as the buses were beginning to load, DB had to have entered the school grounds several minutes *before* classes ended and several minutes *before* the students were dismissed to load onto the buses.

I would hold that the evidence is sufficient to support the trespass finding, even under the most restrictive definition of the term—namely, "while classes are in session." Again, taking the facts in the light most favorable to the State, a rational trier of fact could reasonably have found beyond a reasonable doubt that DB entered the school grounds during school hours, before classes ended.

I would affirm.

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Hunt, J.

[6] Looking at the facts in the light most favorable to the State, the students were not standing around outside the school waiting for an hour after school ended as the majority postulates.